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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-1555

IRA SYLVESTER GODFROY, ET AL., ETC.

v.

UNITED STATES OF AMERICA

MIAMI TRIBE OF OKLAHOMA, ET AL., ETC.

v.

UNITED STATES OF AMERICA

RESPONDENTS' BRIEF IN OPPOSITION

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Respondents

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THE OPINIONS BELOW

The decision of the Court of Claims which is the subject of the petition affirmed a decision of the Indian Claims Commission, 24 Ind. Cl. Comm. 450, (Appendix A to Petition, pp. 14-29).

JURISDICTION

The Indian Claims Commission Act provides for appeals from the Commission to the Court of Claims, and that court's determinations of law are "subject

to review by the Supreme Court of the United States in the manner prescribed by Section 288 of Title 28" (25 U.S.C. Sec. 70s).

THE QUESTION PRESENTED

Whether attorneys' fees allowed by the Indian Claims Commission for the successful prosecution of an Indian tribal claim should be apportioned between two sets of attorneys who represented different segments of the tribe, on the basis of the services rendered and the relative contribution which each made to the final results, as determined by the Commission, or, alternatively, on the basis of the relative numbers of each segment, or equally between the two sets of attorneys, regardless of the services rendered, as contended by petitioners.

STATEMENT OF THE CASE

The present dispute over attorneys' fees stems from the adjudication by the Indian Claims Commission of claims of the Miami Tribe arising out of treaties which the once unified tribe made with the United States. The Miami Indians of today are found, for the most part, in Oklahoma, organized as the Miami Tribe of Oklahoma, and in Indiana, unorganized and sometimes referred to as the Miami Indians of Indiana. In separate suits, each pleading claims on behalf of the entire tribe, one group was represented by the attorneys who are petitioners herein, another by the attorneys who are respondents herein. The suits were heard in a consolidated proceeding and a single final award was entered (*Miami Tribe of Oklahoma* v. *United States* 20 Ind. Cl. Comm. 113).

In a special proceeding for the allowance and apportionment of attorneys' fees, the petitioners requested approximately 70 per cent of the fees on the claim that they represented that percentage of the Indian beneficiaries, and the respondents requested 100 per cent of the fees on the claim that they had done 100 per cent of the work. The question of numbers represented was also disputed, the respondents contending that while both sets of attorneys appeared on behalf of all the potential beneficiaries, only a small fraction of the total had retained the petitioners, as indicated by the evidence of record and by the earlier findings of the Commission (*Miami Tribe of Oklahoma, et al.* v. *United States, supra,* at pp. 118, 122).

The Commission allowed total fees amounting to 10 per cent of the recovery. It found that the respondents carried the burden of the trial of the claims, and that they introduced all the evidence on the merits. The Commission concluded "on consideration of the services rendered by each set of attorneys in these cases and the relative contribution which each made to the final results" that the fees should be apportioned, 70 per cent to the respondents, and 30 per cent to the petitioners (Appendix A to Petition, pp. 27-28). The Commission made no findings on the relative numbers of the groups represented.

ARGUMENT

1. The Question Is Not Important

What is involved is the standard for apportioning fees when different attorneys represent different groups sharing in a common claim, and when such attorneys cannot themselves agree. In the 27-year life of the Indian Claims Commission, there have been only

two such cases. The decision in the first such case was consistent with the holding of the majority in the present case. *Red Lake and Pembina Bands et al.* v. *United States,* 173 C. Cls. 928, 932-938.

2. The Decision Below Is Plainly Correct

The holding of the Indian Claims Commission, affirmed by the Court of Claims, follows the standard laid down by the Indian Claims Commission Act, that attorneys' fees "shall . . . be fixed by the Commission at such amount as the Commission . . . finds to be adequate compensation for services rendered and results obtained . . ." not to exceed 10 per cent of the recovery (25 U.S.C. Sec. 70n).

The decision of the Commission was based upon its findings of fact. The Court of Claims sustained the Commission's findings as supported by substantial evidence (Petition, Appendix D, p. 66). The Indian Claims Commission Act provides that the Commission's findings, when supported by substantial evidence shall be conclusive (25 U.S.C. Sec. 70s).

CONCLUSION

The petition should be denied.

Respectfully submitted,

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